



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 633

Hearing Date: February 25, 2005

Committee On: Judiciary

Introducer(s): (Pahls)

Title: Change provisions relating to the Protection from Domestic Abuse Act

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7	Yes	Senators Aguilar, Bourne, Combs, Flood, Foley, Friend, Pedersen
	No	
	Present, not voting	
1	Absent	Senator Chambers

Proponents:

Senator Rich Pahls
Marty Conboy
Tara Muir

Matt Kahler
Charlie Venditte
Tim Dunning
Cassandra Cates
Erin Richardson
Nancy Livingston
Joan Skagstrom

Representing:

Introducer
City of Omaha
Nebraska Domestic Violence Sexual Assault
Coalition
Douglas County Attorney
Omaha Police Department
Douglas County Sheriff
Self
YWCA Omaha
YWCA Omaha
Domestic Violence Council

Opponents:

Paul Merritt

Representing:

Nebraska District Judges Association

Neutral:

Representing:

Summary of purpose and/or changes:

Legislative Bill 633 would allow the court to order the following relief in a protection order:

- to seek protection from a third party acting under the respondent's direction;
- to order the respondent to stay a minimum of 100 yards or more away from the petitioner;
- allow for the court to award the petitioner temporary custody of any minor children up to 120 days;
- award any other relief deemed necessary for the safety and welfare of the petitioner or the petitioner's children;
- award temporary possession to the petitioner of any animal or household pet;
- If a protection order issued includes a requirement that the respondent refrain from entering a residence or coming within a court-ordered distance of the petitioner, the order cannot be waived or nullified if the petitioner or other family member invites the respondent to the residence or within the court-ordered boundary. The petitioner shall not be charged with a violation of the protection order;
- The court can fix the court order for longer than one year; and
- Clarifies that any person other than the petitioner who knowingly violates a protection order is guilty of a Class 2 misdemeanor.

With regard to child custody, visitation or support, a respondent may be awarded visitation of the children during the same length of time that custody is awarded to the petitioner. However, the court can restrict or deny the respondent's visitation if the court finds that the respondent has done or is likely to do any of the following:

- Abuse or endanger the children
- Use visitation to abuse or harass the petitioner
- Improperly conceal or detain the minor

If the court grants visitation, the order shall specify dates and times for the visitation and an appropriate setting to exchange the children. The respondent may be ordered to pay temporary child support or restitution for the petitioner's loss of earnings and out-of-pocket expenses. The court may order the respondent to pay restitution to any public or private agency for the cost of providing services to the petitioner.

The court may issue, after notice and opportunity for hearing and a finding that the respondent represents a credible threat to the physical safety of the petitioner, an order that the respondent shall not own, possess, purchase, or receive a firearm and shall surrender any firearm certificate procured while a protection order is in effect;

Within 24 hours after issuance of the court order, the respondent shall remove any firearms in his or her immediate possession or control. If the respondent is not at the hearing, the respondent shall remove any such firearms within 48 hours of receiving notice of the court order. The respondent must file an affidavit with the court that the firearms have been stored or sold. A violation of this provision is a Class 2 misdemeanor. All forms requesting a protection order shall contain such firearm language.

A law enforcement agency may store the firearms and may charge the respondent a fee for storage. There shall also be firearm language in a protection order prohibiting the respondent from owning, possessing, purchasing, or receiving a firearm while the protection order is in

effect. The respondent must prove that any firearms were sold or removed from his or her possession within 72 hours after receipt of the order.

A court can issue an ex parte protection order when a peace officer, with consent of the victim, asserts reasonable grounds to believe that the victim is in fear of danger of abuse or that a minor child is in immediate danger. The order will last 5 days and expires on the close of business on the fifth judicial day following the day of issuance.

Under LB 633, the clerk of the court is required to display the protection order petition and affidavit forms in English and Spanish in plain view and display legal advocacy and related service information.

Any ex parte protection order that is denied shall state the specific grounds for the denial of relief. If a petition is granted, the petitioner can request the court to set a hearing date within 14 days after service of the order upon the respondent.

A peace officer may personally serve any protection order issued and the officer may detain a responded for a reasonable period to serve the order. The officer shall file a return receipt with the clerk of court that issued the protection order within seven days after issuance.

The bill also provides that a person over eighteen, not a party to an action, may serve the order. That same person must file a notarized affidavit with the clerk of the court that the order was served and be present at the hearing to provide testimony regarding the service.

Police officers shall receive not less than four hours per year of education and training in the area of domestic abuse.

LB633 also contains provisions relating to pretrial release when a person is arrested for or charged with domestic assault. The court shall determine if the defendant is a threat to the petitioner and if so, the court may impose some limitations on pretrial release.

Explanation of amendments, if any:

The committee amendment to LB 633 makes the following changes:

- Strikes original sections 1 and 13;
- Strikes language pertaining to a third party acting under the respondent's direction;
- Requires a respondent to stay a specified distance from the petitioner as determined by the court;
- Strikes all language pertaining to temporary child support, visitation, and restitution;
- Strikes all provisions relating to firearms;
- Clarifies that the petitioner shall not be charged with aiding and abetting a violation of the petitioner's protection order unless the court finds the petitioner invited the respondent to the residence or other specified place that the respondent was prohibited from entering with the intent to have the respondent arrested for violation of a protection order;
- Strikes language that allows a court to extend a protection order beyond one year;

- Strikes language that a protection order may only be modified by an order of the court and at the request of the petitioner;
- Clarifies that a peace officer shall file his or her return of service of process for a protection order with the clerk of court to harmonize with other statutes pertaining to service of process;
- Provides that every law enforcement officer shall receive two hours of training per year on the problems of domestic abuse.; and
- Renumbers sections and corrects internal references accordingly.

Senator Patrick J. Bourne, Chairperson